

Adopt CHAPTER Env-Ws 1900 to read as follows:

CHAPTER Env-Ws 1900 RULES FOR THE PROTECTION OF INSTREAM FLOW ON DESIGNATED RIVERS

Statutory Authority: RSA 483:9-c,I; RSA 483:11,IV

PART Env-Ws 1901 PURPOSE AND APPLICABILITY

Env-Ws 1901.01 Purpose. The purpose of these rules is to implement standards, criteria, and procedures by which a protected instream flow shall be established and enforced for each designated river or segment to maintain water for instream public uses and to protect the resources for which the river or segment is designated.

Env-Ws 1901.02 Applicability. These rules shall apply to:

- (a) Designated rivers under RSA 483 and their tributary drainage area;
- (b) Affected water users; and
- (c) Owners and operators of dams on designated rivers and in their tributary drainage area.

PART Env-Ws 1902 DEFINITIONS

Env-Ws 1902.01 "7Q10" means the lowest average flow rate for a period of 7 consecutive days with an expected recurrence interval of once in every 10 years, determined at a fixed location on a river or stream, and expressed in terms of volume per time period.

Env-Ws 1902.02 "Affected water user" means a registered water user under Env-Wr 700 having a withdrawal or discharge location within 500 feet of a designated river or within 500 feet of a stream in its tributary drainage area.

Env-Ws 1902.03 "Aggregate water use" means the total water use by all affected water users at any point on a designated river, being the difference between the sum of registered water withdrawals and the sum of measured registered water returns.

Env-Ws 1902.04 "Commissioner" means the commissioner of the New Hampshire department of environmental services.

Env-Ws 1902.05 "cfs/m" means cubic feet per second of flow per square mile of stream drainage area

Env-Ws 1902.06 "Department" means the New Hampshire department of environmental services.

Env-Ws 1902.07 "Designated river" means any river or river segment that is designated under RSA 483.

Env-Ws 1902.08 "Governing body" means the board of selectmen in a town, the board of mayor and aldermen in a city or the council in a city or town with a council, or the county commissioners when referring to unincorporated towns and unorganized places.

Env-Ws 1902.09 "IFPAC" means the instream flow protection advisory committee established under Env-Ws 1909

Env-Ws 1902.10 "LMAC" means the lakes management advisory committee established under RSA 483-A:6

Env-Ws 1902.11 "LRMAC" means a local rivers management advisory committee established pursuant to RSA 483:8-a.

Env-Ws 1902.12 "RMAC" means the rivers management advisory committee established pursuant to RSA 483:8.

Env-Ws 1902.13 "Segment" means a portion of a designated river assigned to one of the classifications identified in RSA 483:7-a

Env-Ws 1902.14 "WMPA" means the Water Management Plan Area, which is the tributary drainage area to a designated river for which a water management plan is required.

PART Env-Ws 1903 DE MINIMIS FLOW

Env-Ws 1903.01 De minimis amount available for use. A flow equal to 5 percent of 7Q10 shall be a de minimis amount that is always available for use. Instream flow shall be considered to be protected if aggregate water use is below the de minimis amount.

Part Env-Ws 1904 GENERAL STANDARD FOR INSTREAM FLOW PROTECTION

Env-Ws 1904.01 General Standard. A general standard for instream flow protection is established for all designated rivers that do not have an established protected instream flow. A designated river is in compliance with the general standard when:

(a) Aggregate water use does not exceed 5% of 7Q10 when stream flow is less than or equal to 0.5 cfs; and

(b) Aggregate water use does not exceed 0.02 cfs when stream flow is greater than 0.5 cfs and less than or equal to 1.0 cfs; and

(c) Aggregate water use does not exceed 0.04 cfs when stream flow is greater than 1.0 cfs and less than or equal to 4 cfs; and

- (d) Aggregate water use does not exceed 0.16 cfs when stream flow is greater than 4 cfs.

Env-Ws 1904.02 Application of the General Standard to Hydroelectric Facilities.

(a) The General Standard shall not apply to hydroelectric facilities for the river locations between the point of withdrawal and the point of return.

(b) For hydroelectric energy facilities licensed by the Federal Energy Regulatory Commission on designated rivers, the department shall establish the US Fish and Wildlife Service Interim Regional Policy for Aquatic Base Flow as the minimum release in any water quality certification, permit, or approval after expiration of the license in effect at the time of rule adoption, unless a different minimum release is required under a Water Management Plan.

(c) For hydroelectric energy facilities granted an exemption from the Federal Energy Regulatory Commission licensing process on designated rivers, the department shall establish the US Fish and Wildlife Service Interim Regional Policy for Aquatic Base Flow as the minimum release in any water quality certification, permit, or approval after 30 years from the date of rule adoption or after the facility's existing power purchase contract expires, whichever is earlier, unless a different minimum release is required under a Water Management Plan.

Part Env-Ws 1905 PROTECTED INSTREAM FLOWS AND WATER MANAGEMENT PLANS

Env-Ws 1905.01 Establishment of Protected Instream Flows and Preparation of Water Management Plans. The commissioner, in consultation with the IFPAC, shall establish protected instream flows on a designated river and adopt a water management plan for the WMPA if:

- (a) A designated river is not in compliance with the general standard; or
- (b) The commissioner determines that a proposed or potential water withdrawal or other flow alteration is likely to cause an adverse effect on any public instream use on a designated river.

Env-Ws 1905.02 Request to Establish Protected Instream Flows.

(a) The commissioner shall consider establishing protected instream flows on a designated river and adopting a water management plan for the WMPA upstream of a designated river if a person requests establishment of protected instream flows.

(b) The request shall be in writing.

(c) The request shall include:

- (1) The name, address and daytime telephone number of the person requesting establishment of protected instream flows;

- (2) If the person requesting is not an individual, the name of an individual who can be contacted on behalf of the requesting organization;
 - (3) The reasons establishment of protected instream flows is being requested;
 - (4) The factors identified in RSA 483:1, RSA 483:6, IV(a), and RSA 483:9-c;
 - (5) Data in support of the request
- (d) Within 30 days of receiving a request, the commissioner shall either grant or deny the request.
- (e) If the commissioner believes that an oral hearing would facilitate making a decision to deny or grant the request, the commissioner shall:
- (1) Schedule a hearing; and
 - (2) Notify the person of the date, time and place of the hearing.
- (f) Any hearing so scheduled shall be conducted in accordance with RSA 541-A and Env-C 200.
- (g) If the commissioner denies the request, the commissioner shall:
- (1) Notify the person in writing of the denial; and
 - (2) State the reason(s) for the denial.
- (h) If the commissioner grants the request, the commissioner shall:
- (1) Notify the person in writing that protected instream flows will be established; and
 - (2) Initiate the process for establishment of protected instream flows

Env-Ws 1905.03 Sequence. The commissioner shall establish protected instream flows on a designated river prior to adoption of the water management plan for the upstream watershed.

Env-Ws 1905.04 Issuance of 401 Water Quality Certifications.

(a) When a Water Management Plan is required under Env-Ws 1905.01 but not adopted, the department shall not issue any water quality certification, permit, or approval for any project or activity that would result in increased water use during times when the designated river is not in compliance with the General Standard.

(b) For a designated river that is in compliance with the General Standard, the department shall not issue any water quality certification, permit, or approval for any project or activity that would cause the river to become noncompliant unless a Water Management Plan has been adopted.

(c) For a designated river with established protected instream flows, all water quality certifications, permits or approvals issued by the department shall require maintenance of the established protected instream flows.

Part Env-Ws 1906 PROCEDURE FOR ESTABLISHMENT OF PROTECTED INSTREAM FLOWS

Env-Ws 1906.01 Elements. To establish protected instream flows the commissioner shall:

(a) Conduct a Protected Instream Flow Study and propose protected instream flows as provided in Env-Ws 1906.02

(b) Make the study available for public review;

(c) Hold a public hearing and receive comments on the Study and the recommended Protected Instream Flows as provided in Env-Ws 1906.03; and

(d) Issue a decision establishing protected instream flows for the designated river, as provided in Env-Ws 1906.04.

Env-Ws 1906.02 Protected Instream Flow Study. The Protected Instream Flow Study shall:

(a) Identify and catalog segments, as defined by RSA 483:7A, on the designated river;

(b) For each segment, identify and catalog outstanding characteristics under RSA 483:1, including:

(1) recreational;

(2) fisheries;

(3) wildlife;

(4) environmental;

(5) cultural;

(6) historical;

(7) archaeological;

- (8) scientific;
- (9) ecological;
- (10) aesthetic;
- (11) community significance;
- (12) agricultural;
- (13) public water supply; and
- (14) other outstanding characteristics;

(c) For each segment, identify and catalog all instream public uses on the designated river under RSA 483:9-c.I, including:

- (1) navigation;
- (2) recreation;
- (3) fishing;
- (4) storage;
- (5) conservation;
- (6) maintenance and enhancement of aquatic and fish life;
- (7) fish and wildlife habitat;
- (8) wildlife;
- (9) the protection of water quality and public health;
- (10) pollution abatement;
- (11) aesthetic beauty;
- (12) hydroelectric energy production; and
- (13) other instream public uses;

(d) For each segment, identify and catalog all resources for which the river or segment is designated pursuant to RSA 483:6 IV a, being those resources identified in river nomination reports and documents or river designation legislation;

(e) Identify and catalog all documents and reports relative to a segment's outstanding characteristics, the resources for which the river is designated, and instream public uses, including:

- (1) designated river nomination reports;
- (2) river corridor management plans;
- (3) water quality studies;
- (4) natural heritage inventory;
- (5) fishery and aquatic resource studies;
- (6) environmental assessments;
- (7) environmental impact statements; and
- (8) other available reports and documents;

(f) Include an on-the-water stream survey of all resources, which identifies and catalogs from direct observation:

- (1) fish;
- (2) wildlife
- (3) macroinvertebrates;
- (4) plants;
- (5) recreational use;
- (6) characteristics cataloged in (b) above; and
- (7) instream public uses cataloged in (c) above;

(f) Identify and document method(s) for establishing a protected instream flow on segments for the most sensitive instream public use or resource identified in (c) and (d) above;

(g) For each segment and most sensitive instream public use or resource, determine and document a recommended protected instream flow based on application of the method(s) identified in (f) above and applicable water quality standards; and

(h) Assess the affect of the protected instream flow on existing hydroelectric power generation, water supply, flood control and other riparian users within the WMPA.

Env-Ws 1906.03 Publication, Hearing and Opportunity for Public Comment on Protected Instream Flows.

(a) After the Protected Instream Flow Study has been prepared, and prior to establishment of protected instream flows for a designated river or segment, the commissioner, in cooperation with the IFPAC, shall make the study available for public review and hold a public hearing to receive comment as they pertain to protected instream flows on the following factors:

- (1) All factors identified in RSA 483, including considerations identified in RSA 483:1, RSA 483:6, IV(a), and RSA 483:9-c;
- (2) Flows established pursuant to existing federal licensing processes or state contracts;
- (3) Whether there are wastewater discharges that require a certain instream flow for permit compliance or maintaining water quality standards;
- (4) Whether the river contains flow-regulating structures such as dams, and if so, how such structures are used to manage flow;
- (5) Information relevant to flow conditions that will conserve, protect, maintain, or restore aquatic life or habitat, or both;
- (6) Information relevant to flow conditions that will conserve, protect, maintain, or restore recreational uses;
- (7) Information relevant to flow conditions that will conserve, protect, maintain, or restore resources for which the river is designated;
- (8) Stream gaging data and watershed characteristics; and
- (9) Pertinent resource management plans including fisheries management plans, watershed management plans, and recreation management plans;
- (10) Other information relevant to the proposed protected instream flows.

(b) The hearing shall be held in a community through or past which the designated river flows.

(c) At least 30 days before the hearing, the commissioner shall issue a notice of the document availability and hearing in a newspaper of local circulation and send written notice of the document availability and hearing to, and solicit comment from, the following:

- (1) Affected water users in the watershed;
- (2) Dam owners in the watershed;
- (3) Federal energy regulatory commission, for each WMPA with a licensed or exempted hydropower site;
- (4) LMAC members;
- (5) LRMAC members for the designated river;
- (6) The governing body of each municipality through or past which the designated river flows;
- (7) National park service;
- (8) New Hampshire department of justice;
- (9) Public utilities commission;
- (10) RMAC members;
- (11) The governor of any state which shares a designated river;
- (12) United States environmental protection agency;
- (13) United States fish and wildlife service;
- (14) United States forest service, for each designated river inside the white mountain national forest;
- (15) United States geological survey; and
- (16) Persons who have requested in writing to be notified of the hearing

(d) At the public hearing, the commissioner shall specify a comment period which shall close at least 30 days after the hearing date, during which time the commissioner will receive written comments on the factors pertaining to the proposed protected instream flows.

Env-Ws 1906.04 Establishment of Protected Instream Flows.

(a) Within 60 days of the close of the public comment period, the commissioner shall issue a decision establishing protected instream flows for the designated river.

(b) The commissioner's decision shall:

- (1) Be in writing;
- (2) State the basis for the established flow(s), including an assessment of how the established flows will meet applicable water quality standards;
- (3) Include the assessment required by RSA 483:9-c, III;
- (4) Include a summary of comments received; and
- (5) Include an explanation of how the comments affected the established flows.

(c) The commissioner shall send copies of the decision to:

- (1) All persons identified in Env-Ws 1907.01(c); and
- (2) Persons who submitted written comments on the proposed flows and who requested to receive a copy of the notice of the established flows.

Env-Ws 1906.05 Reconsideration of an Established Protected Instream Flow.

(a) A person may file a petition with the commissioner to request reconsideration of an established protected instream flow.

(b) If the petition is filed within 30 days of the date the decision is issued, the implementation of the decision will be stayed until the commissioner has acted on the petition, in accordance with RSA 483:9-c, VI.

(c) The petition shall be in writing.

(d) The petition shall include:

- (1) The name, address and daytime telephone number of the person requesting reconsideration;
- (2) If the person requesting reconsideration is not an individual, the name of an individual who can be contacted on behalf of the organization requesting the reconsideration;

- (3) The specific change being sought in a protected instream flow;
 - (4) An explanation of how the flow that the commissioner established will adversely affect one or more of the resources for which a particular river or segment was designated by the general court under RSA 483, or will not meet water quality standards;
 - (5) The factors identified in RSA 483:1, RSA 483:6, IV(a), and RSA 483:9-c;
 - (6) If applicable, the specific error(s) committed by the commissioner in evaluating the factors identified pursuant to (4) and (5) above; and
 - (7) Data not available or not considered at the time the protected instream flow was set.
- (e) Within 30 days of receiving a petition for reconsideration, the commissioner shall:
- (1) Deny the request and affirm the established protected instream flow; or
 - (2) Grant the request and reconsider the protected instream flow.
- (f) If the commissioner believes that an oral hearing would facilitate making a decision to deny or grant the request, the commissioner shall:
- (1) Schedule a hearing; and
 - (2) Notify the petitioner of the date, time and place of the hearing.
- (g) Any hearing so scheduled shall be conducted in accordance with RSA 541-A and Env-C 200.
- (h) If the commissioner denies the request, the commissioner shall:
- (1) Notify the petitioner in writing of the denial; and
 - (2) State the reason(s) for the denial.
- (i) If the commissioner grants the request, the commissioner shall:
- (1) Notify the petitioner in writing that the established protected instream flow will be reconsidered; and
 - (2) Initiate hearing and opportunity for public comment on the proposed new protected instream flow by the process described in Env-Ws 1906.03 and 1906.04.
- (j) As specified in RSA 483:9-c, VI, the commissioner's decision on the request may be appealed in accordance with RSA 541.

(k) The commissioner shall initiate action to reconsider a protected instream flow by the process described in Env-Ws 1906.03 and 1906.04 if there are changed conditions in the watershed that warrant re-evaluation of the flows.

Env-Ws 1906.06 Protected Instream Flows and Water Quality Criteria. Protected instream flows established by the commissioner shall serve as a water quality criteria for the purpose of administration of water quality standards by the department under the federal Clean Water Act.

Part Env-Ws 1907 PROCEDURE FOR ADOPTION OF WATER MANAGEMENT PLANS

Env-Ws 1907.01 Elements. The water management plan shall document the means by which the protected instream flows established under Part Env-Ws 1906 for a designated river or segment will be met. To adopt a water management plan the commissioner shall:

(a) Prepare a water management plan, which includes:

- (1) A conservation plan, as provided in Env-Ws 1907.02;
- (2) A water use plan, as provided in Env-Ws 1907.03; and
- (3) A dam management plan, as provided in Env-Ws 1907.04;

(b) Make the water management plan available for public review;

(c) Hold a public hearing and receive comments as provided in Env-Ws 1907.05; and

(d) Issue a decision adopting a water management plan for the WMPA of the designated river, as provided in Env-Ws 1907.06.

Env-Ws 1907.02 Conservation Plan. To prepare the conservation plan the commissioner shall:

(a) Identify all affected water users in the WMPA.

(b) Determine water user types within the WMPA, and conduct a literature search of conservation measures and best management practices applicable to each type of water user;

(c) For each affected water user in the WMPA, write a report of water use patterns, needs, and the potential for conservation by collecting specific water-use data and information from department records, site visits, and interviews, which shall include the following information:

(1) A complete description of all water use at the facility including:

- a. Water source(s) and destination(s);

- b. Anticipated demand for water that describes maximum, minimum, and average water withdrawal rates, schedules and durations;
 - c. Factors that control water demand such as consumer choice, delivery contracts, availability, crop needs, manufacturing runs, seasonal occupancy, and precipitation;
 - d. Projected growth or decline in the demand for water and a description of the factors that control the growth or decline in demand for water; and
 - e. A description of how the water is utilized including a description and a percent estimate of the total volume of water used for each applicable process or need.
- (2) An evaluation of all water conservation opportunities employed at the facility including:
- a. Assessment of changes to historic water demand records;
 - b. Leak detection and repair activities;
 - c. Water audits and preventative maintenance programs;
 - d. Employee education pertaining to water conservation practices; and
 - e. Other water conservation opportunities
- (3) A detailed description of past and present water conservation efforts, their effectiveness and cost;
- (4) A description of water conservation best management practices or best available technologies applicable to the types of water-using processes at the facility;
- (5) A detailed summary of water conservation measures that are planned for implementation during the next 5 years including a quantitative estimate of the water savings associated with these measures;
- (6) An economic analysis and calculation of a payback period that factors the true cost of water for implementing the water conservation best management practices or best available technologies listed in Env-Ws 1907.02(b) above, but that are not implemented at the facility; and
- (7) A detailed summary of any efforts to implement or develop new processes or technologies that may result in additional water conservation opportunities;

(d) Develop a conservation implementation plan and quantitative water use reduction targets by negotiating implementation of conservation measures with each affected water user, which includes:

- (1) A description of water conservation measures to be implemented;
- (2) A schedule for the implementation of water conservation measures; and
- (3) A description of a process to monitor and evaluate the results of, and compliance with, the water conservation plan.

Env-Ws 1907.03 Water Use Plan. To develop the water use plan the commissioner shall:

(a) Use the water use data and information collected pursuant to Env-Ws 1907.02(c) to define water use patterns and needs of each affected water user within the WMPA;

(b) For each affected water user, write a report describing the potential for water use modification or sharing or both to meet instream flow requirements, including consideration of water use patterns and needs as determined in (a) above;

(c) For each existing hydroelectric power facility within or upstream from the designated river or segment, request the assistance of the public utilities commission in order to assess the effect of a protected instream flow upon such facility.

(c) Meet with each affected water user and discuss protected instream flow requirements;

(d) Mediate and guide negotiations among dam owners and affected water users towards water use and dam management that will meet protected instream flow requirements; and

(e) For each affected water user prepare an individual water use plan so that the net effect of implementation of all individual plans, in coordination with implementation of the dam management plan, is maintenance of the protected instream flows.

Env-Ws 1907.04 Dam Management Plan. To develop the dam management plan the commissioner shall:

(a) Collect data and information from DES sources, site visits and interviews with each dam operator on characteristics and operational procedures of all dams with impoundments greater than 10 acres within the WMPA and the associated dam's characteristics and operation plan including:

- (1) Name of the dam;
- (2) Town of dam location;
- (3) Name, address and telephone number of owner or operator or both;

- (4) Emergency contact person and phone number;
- (5) Dam State ID number;
- (6) Dam status (active or inactive);
- (7) Names of the water body impounded by dam and the downstream river;
- (8) Designated use(s) of the impoundment;
- (9) Elevation of recreational pool or height relative to the lowest spillway (in feet);
- (10) Elevation of additional spillway crest(s) or height relative to the lowest spillway (in feet);
- (11) Elevation of streambed at centerline of dam or height relative to the lowest spillway (in feet);
- (12) Elevation of top of dam or height relative to the lowest spillway (in feet);
- (13) Height of dam (in feet from toe to highest point on the dam);
- (14) Freeboard (in feet);
- (15) Type and dimensions of spillway control(s) or outlet works;
- (16) Surface area of impoundment at maximum impoundment (in acres);
- (17) Drainage area (in square miles);
- (18) Maximum impoundment storage (in acre-feet);
- (19) Permanent impoundment storage (in acre-feet);
- (20) Estimated net effective storage (in acre-feet);
- (21) Maximum unoperated discharge (in cfs);
- (22) Design storm discharge, (in cfs);
- (23) Estimated 50-year flood flow, (in cfs);
- (24) Estimated 100-year flood flow, (in cfs);

- (25) Contractual obligations, minimum flow requirements and flowage rights, if any; and
- (26) Operation and maintenance plan summary;
- (27) Interests of riparian property owners to the impoundment
- (28) Water quality standards factors related to the impoundment

(b) For each dam, write a report describing the potential water available for release to maintain protected instream flows, and the potential for dam management to meet instream flow requirements, including dam operation patterns, physical structure, and needs as determined in (a) above;

(c) Meet with dam owners to explain protected instream flow requirements;

(d) Mediate and guide negotiations among dam owners and affected water users towards water use and dam management that will meet protected instream flow requirements; and

(e) For each dam prepare an individual dam management plan so that the net effect of implementation of all individual plans, in coordination with implementation of the water use plan, is maintenance of the protected instream flows.

Env-Ws 1907.05 Water Management Plan Document.

(a) The commissioner shall prepare a water management plan document defining the conservation measures and operational measures, that will be implemented by each affected water user and dam operator in the WMPA to meet the protected instream flow requirements.

(b) The plan shall include an implementation schedule for each measure identified in (a)

(c) The commissioner shall make the water management plan available for public review at least 30 days before the hearing and opportunity for public comment under Env-Ws 1907.06.

Env-Ws 1907.06 Hearing and Opportunity for Public Comment on Water Management Plans.

(a) Prior to adoption of a water management plan for a designated river or segment, the commissioner, in cooperation with the IFPAC, shall hold a public hearing to receive comment as they pertain to the proposed plan on the following factors:

- (1) Any factors identified in RSA 483, including considerations identified in RSA 483:1, RSA 483:6, IV(a), and RSA 483:9-c;
- (2) Water quality standards

- (3) The extent to which implementation of the water management plan will maintain the established protected instream flows;
 - (4) Whether there are affected water users or dam owners in the watershed that have failed to participate in negotiations for development of the plan;
 - (5) Objections of affected water users or dam owners to provisions of the proposed plan;
 - (6) Information relevant to conservation, water use, or dam operation which has not been considered in preparation of the proposed plan;
 - (7) Information relevant to implementation of the proposed plan;
 - (8) Other information relevant to the proposed plan.
- (b) The hearing shall be held in a community through or past which the designated river flows.
- (c) At least 30 days before the hearing, the commissioner shall issue a notice of the hearing in a newspaper of local circulation and send written notice of the public hearing to and solicit comment from the following:
- (1) Affected water users in the watershed;
 - (2) Dam owners in the watershed;
 - (3) Federal energy regulatory commission, for each designated river with a licensed or exempted hydropower site;
 - (4) LMAC members
 - (5) LRMAC members for the designated river;
 - (6) The governing body of each municipality through or past which the designated river flows;
 - (7) National park service;
 - (8) New Hampshire department of justice;
 - (9) Public utilities commission;
 - (10) RMAC members;
 - (11) The governor of any state which shares a designated river;

- (12) United States environmental protection agency;
- (13) United States fish and wildlife service;
- (14) United States forest service, for each designated river inside the white mountain national forest; and
- (15) United States geological survey.
- (16) Persons who have requested in writing to be notified of the hearing

(d) At the public hearing, the commissioner shall specify a comment period which shall close at least 30 days after the hearing date, during which time the commissioner will receive written comments on the factors pertaining to the proposed Water Management Plan.

Env-Ws 1907.07 Adoption of Water Management Plans.

(a) Within 60 days of the close of the public comment period, the commissioner shall revise the plan in consideration of comments received and shall adopt the plan if:

- (1) The plan contains the three major elements described in Env-Ws 1907.01
- (2) The conservation plan contains goals and timelines for each affected water user; and
- (3) Implementation of the water use and dam management plans will result in maintenance of the established protected instream flows.

(b) The commissioner's adoption shall:

- (1) Be in writing;
- (2) Include a summary of comments received; and
- (3) Include an explanation of how the comments affected the final plan.

(c) The commissioner shall send copies of the plan to:

- (1) All persons identified in Env-Ws 1907.06 (c); and
- (2) Persons who submitted written comments on the proposed flows and who requested to receive a copy of the notice of the established flows.

Env-Ws 1907.08 Reconsideration of an Element of a Water Management Plan

(a) A person may file a petition with the commissioner to request change or reconsideration of an element of an adopted plan.

(b) If the petition is filed within 30 days of the date of adoption, the implementation of the decision will be stayed until the commissioner has acted on the petition, in accordance with RSA 483:9-c, VI.

(c) The petition shall be in writing.

(d) The petition shall include:

(1) The name, address and daytime telephone number of the person requesting reconsideration;

(2) If the person requesting reconsideration is not an individual, the name of an individual who can be contacted on behalf of the organization requesting the reconsideration;

(3) The specific change being sought in the plan;

(4) An explanation of how the requested change to the adopted plan is consistent with maintenance of established protected instream flows and water quality standards;

(5) Documentation that all affected water users and dam owners to whom the change applies have agreed to the change, or if all have not agreed, an explanation of the reasons for failure to agree;

(6) If applicable, the specific error(s) committed by the commissioner in adoption of the plan;

(7) Data not available or considered at the time the plan was adopted.

(e) Within 30 days of receiving a petition for reconsideration, the commissioner shall:

(1) Deny the request and affirm the adopted plan; or

(2) Grant the request and reconsider the provisions of the plan requested.

(f) If the commissioner believes that an oral hearing would facilitate making a decision to deny or grant the request, the commissioner shall:

(1) Schedule a hearing;

(2) Notify the petitioner of the date, time and place of the hearing.

(g) Any hearing so scheduled shall be conducted in accordance with RSA 541-A and Env-C 200.

(h) If the commissioner denies the request, the commissioner shall:

- (1) Notify the petitioner in writing of the denial;
- (2) State the reason(s) for the denial.

(i) If the commissioner grants the request, the commissioner shall:

- (1) Notify the petitioner in writing that the plan will be reconsidered;
- (2) Initiate hearing and opportunity for public comment on the requested revisions to the plan by the process described in Env-Ws 1907.06 and 1907.07.

(j) The commissioner may change or reconsider an element of an adopted plan by the process described in Env-Ws 1907.06 and 1907.07.

Part Env-Ws 1908 PRIORITY LIST

Env-Ws 1908.01 Priority List Required. When more than one Water Management Plan is required under Env-Ws 1905.01, but not completed, the commissioner, in consultation with the RMAC, shall prepare a priority list and a schedule for preparation of the plans. The commissioner shall consider the following factors in preparing the priority list:

- (a) The degree to which the general standard is exceeded;
- (b) The likelihood of adverse effects on protected instream uses in that watershed;
- (c) The location in the drainage basin relative to other watersheds for which a water management plan has been initiated.

Env-Ws 1908.02 Priority List Publication. The commissioner shall publish the priority list annually.

Env-Ws 1908.03 Initial Priority List and Determinations for Newly Designated Rivers.

(a) For rivers designated prior to the effective date of these rules, the commissioner, in consultation with the RMAC, shall within three months of the effective date of the rules:

- (1) Determine if a Water Management Plan is required,
- (2) Prepare an initial priority list and schedule.

(b) For rivers designated after the effective date of these rules, the commissioner shall determine if a water management plan is required for any river or segment within three months of designation.

Part Env-Ws 1909 INSTREAM FLOW PROTECTION ADVISORY COMMITTEE.

Env-Ws 1909.01 Establishment. Prior to establishing protected instream flows for any designated river, the commissioner, in consultation with the RMAC, shall appoint an instream flow protection advisory committee (IFPAC) for the designated river and its WMPA.

Env-Ws 1909.02 Composition. All committee members shall be New Hampshire residents and include:

- (a) Two LRMAC representatives;
- (b) Two representatives of affected water users in the WMPA;
- (c) One local conservation commission member;
- (d) One local government official representative;
- (e) One representative of recreational interests;
- (f) One local community citizen representative;
- (g) One representative of the conservation community;
- (h) One representative of the local business community;
- (i) One representative of a lake association in the WMPA;
- (j) One public water supplier within the WMPA, if any;
- (j) One dam owner within the WMPA; and
- (k) One agricultural water user within the WMPA, if any.

Env-Ws 1909.03 Duties. The duties of the committee shall be:

(a) To provide information to the commissioner towards completion of a protected instream flow study as detailed in Env-Ws- 1906.02.

(b) To review and comment on the protected instream flow study identified in (a).

(c) To provide information to the commissioner towards the completion of a water management plan as detailed in Env-Ws- 1907.01.

(d) To review and comment on the water management plan identified in (c).

(e) To assist the commissioner in hearings, negotiations, and public meetings related to establishment of protected instream flows and adoption of water management plans.

1909.04 IFPAC Period of Service. The committee shall serve until the commissioner adopts the water management plan.

1909.05. Meetings. The commissioner shall schedule and convene the first meeting at which the committee shall elect a chairman and vice chairman. Subsequent meetings shall be at the call of the chair, or at the request of three or more committee members. The commissioner shall provide administrative support for the committee.

Part Env-Ws 1910 ESTIMATION OF AGGREGATE WATER USE

Env-Ws 1910.01 Estimation of aggregate water use. The department shall estimate aggregate water use and stream flow on each designated river for the preceding calendar year, and shall publish a report no later than the first day of June including:

- (a) Estimated water use for each affected water user;
- (b) Estimated aggregate water use at each withdrawal or return location;
- (c) Estimated stream flow at each withdrawal or return location
- (c) Identification of any times when and locations where designated rivers that do not have established protected instream flows under Env-Ws Part 1906 are not in compliance with the general standard;
- (d) Identify a WMPA for designated rivers that are not in compliance with the general standard;
- (e) For designated rivers with protected instream flows established under Env-Ws Part 1906, identification of any times and locations at which protected instream flows were not maintained.
- (f) For designated rivers with water management plans adopted under Env-Ws Part 1907, identification of any times and locations for which the provisions of the water management plan were not met.

PART Env-Ws 1911 ADMINISTRATION OF WATER MANAGEMENT PLANS

Env-Ws 1911.01 Compliance with Adopted Water Management Plan. Affected water users and dam owners shall comply with the provisions of an adopted water management plan.

PART Env-Ws 1912 WAIVERS

Env-Ws 1912.01 Waivers

(a) The rules contained in this part are intended to apply to a variety of conditions and circumstances. It is recognized that strict compliance with all rules prescribed herein might not fit every conceivable situation. Affected persons may request a waiver of specific rules outlined in this part in accordance with paragraph (b) below.

(b) All requests for waivers shall:

(1) Be submitted in writing to the commissioner; and

(2) Include the following information:

a. A description of the designated river and water use, instream public use or resource to which the waiver request relates;

b. A specific reference to the section of the rule for which a waiver is being sought;

c. A full explanation of why a waiver is necessary and demonstration of the affect caused if the rule is adhered to;

d. A full explanation of the alternatives for which a waiver is sought with supporting data; and

e. A full explanation of how the alternatives for which a waiver is sought are consistent with the intent of RSA 483:9-c, would have a just result, and would adequately protect human health and the environment.

(c) The commissioner shall grant a waiver if the commissioner finds that the alternatives proposed are at least equivalent to the requirements contained in this part, meet water quality standards, and are adequate to ensure that the provisions of RSA 483:9-c are met.

(d) The commissioner shall not grant any waiver that contravenes the intent of any rule.

(e) The commissioner shall issue a written response to a request for a waiver.

(f) If the waiver is denied, the commissioner shall specifically set forth the reason(s) for the denial.

(g) The commissioner shall grant a waiver for a specific time period not to exceed 10 years.

PART Env-Ws 1913 COMPLIANCE BY POLITICAL SUBDIVISIONS

Env-Ws 1913.01 Procedures

(a) If the governing body or an authorized official of a political subdivision believes that compliance with any provisions of these rules by the political subdivision would violate the provisions of Part I, Article 28-a of the New Hampshire Constitution or RSA 541-A:25, the governing body or authorized official may notify the commissioner in writing. The notification shall state:

- (1) The specific rule, by section number, to which the political subdivision believes the provisions of Article 28-a or RSA 541-A:25 applies;
- (2) The estimated amount of funding required by the political subdivision to comply with the rule;
- (3) That the legislative body of the political subdivision has considered and failed to appropriate funding to comply with the rule identified pursuant to (1) above; and
- (4) The date the action in (3) above was taken.

(b) Within 30 days of receipt of a notification under (a) above, the commissioner shall review the notification and respond in writing. The response shall state the results of the review, specifically:

- (1) Whether the specific provisions of the rule identified by the political subdivision pursuant to (a) above implement a federal statute or regulation with which the political subdivision would otherwise be required to comply by the federal government;
- (2) Whether the commissioner believes that the specific provisions of the rule identified by the political subdivision pursuant to (a) above contains new, expanded, or modified programs or responsibilities compared to those in effect on November 28, 1984; and
- (3) Whether the commissioner believes that the state has provided or will provide funding to the political subdivision in order that the political subdivision can comply with the rule.

Env-Ws 1913.02 Commissioner Action. If the commissioner agrees with the political subdivision that the rule objected to by the political subdivision is subject to Part I, Article 28-a or RSA 541-A:25 and that the state has not provided nor will provide funding to the political subdivision in order that the political subdivision can comply with the rule, the commissioner shall issue a notice in writing to the political subdivision that the commissioner will not take action against the political subdivision to compel compliance with the rule or to impose penalties for failing to comply.